Supreme Court, U.S.
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No. 01-688

In the Supreme Court of the United States

DAIMLERCHRYSLER CORPORATION

Petitioner,

v.

URSULA GIBSON, ET AL.

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONER

INTEREST OF THE AMICUS CURIAE

The Chamber of Commerce of the United States of America ("the Chamber") is the nation's largest federation of business companies and associations. The Chamber represents an underlying membership of more than three million businesses and professional organizations of every size, sector and geographic region of the country. The Chamber serves as the principal voice of the American business community. An important function of the Chamber is to represent the interests of its members by filing amicus curiae briefs in cases involving issues of national concern to American business.

Amicus's members have been subjected to abusive class actions in state courts on a regular basis. They accordingly have a strong interest in supporting Congress's decision to confer federal jurisdiction over the claims of all members of a Rule 23 class action when the claims of some class members satisfy the amount-in-controversy requirement of 28 U.S.C. § 1332 and in ensuring that Congress's intent is not thwarted by a crabbed interpretation of 28 U.S.C. § 1367 that limits supplemental jurisdiction to cases in which a named plaintiff meets the jurisdictional minimum amount established in Section 1332.[1]

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[1] Pursuant to Rule 37.6, amici state that no counsel for a party authored this brief in whole or in part, and no person or entity other than amici, their members, or their counsel made any monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of this brief. Their letters of consent have been lodged with the Clerk of the Court.

SUMMARY OF THE ARGUMENT

Section 1367 unambiguously authorizes the federal courts to exercise supplemental jurisdiction over the claims of all members of a Rule 23 class action, so long as the courts have original jurisdiction over the claims of some of the class members. Although the Ninth Circuit correctly reached this conclusion, it went on to hold that only the claims of the named plaintiffs may be considered in determining whether the amount-in-controversy requirement of 28 U.S.C. § 1332 has been satisfied. In doing so, it essentially eviscerated Congress's effort to expand supplemental jurisdiction by allowing plaintiffs' counsel to evade federal jurisdiction simply by limiting their class representatives to those whose claims fail to meet the jurisdictional minimum amount established in Section 1332. Certiorari is warranted to resolve the confusion in the courts as to the proper interpretation of Section 1367 and to ensure that Congress's intent in amending that provision is not thwarted.

ARGUMENT

As the Fourth, Fifth, Seventh, and Ninth Circuits have held, 28 U.S.C. § 1367 unambiguously authorizes federal courts to exercise supplemental jurisdiction over the claims of all members of a Rule 23 class action so long as the courts have original jurisdiction over the claims of some class members. In the diversity context, this means that, if the named class members do not hail from the same state as any of the defendants and at least one has claims that exceed the monetary threshold in 28 U.S.C. § 1332, the federal courts have supplemental jurisdiction over the claims of the absent class members without regard to the value of those claims. Although the Ninth Circuit correctly reached this conclusion, it deprived that ruling of much practical impact by going on to hold that only the claims of the named plaintiffs may be considered in determining whether the amount-in-controversy requirement of Section 1332 has been satisfied. Because the petition for writ

of certiorari persuasively demonstrates the fallacy of the Ninth Circuit's approach, we will not here burden the Court with an additional analysis of the statute. Instead, we will demonstrate that broadening federal jurisdiction over class actions was a perfectly rational thing for Congress to do and that Congress could not have intended that Section 1367 be interpreted in a manner that would allow plaintiffs' counsel to evade federal jurisdiction through artful pleading.

1. The original purpose of diversity jurisdiction was to protect out-of-state parties from being treated unfairly by local courts. See *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809) (Marshall, C.J.). With the advent of the class action, the need for such protection has multiplied. As Judge Easterbrook recently explained:

> [A] grant of class status can put considerable pressure on the defendant to settle, even when the plaintiff's probability of success on the merits is slight. Many corporate executives are unwilling to bet their company that they are in the right in big-stakes litigation, and a grant of class status can propel the stakes of a case into the stratosphere.

Blair v. Equifax Check Servs., Inc., 181 F.3d 832, 834 (7th Cir. 1999). The Fifth Circuit has similarly noted:

> In addition to skewing trial outcomes, class certification creates insurmountable pressure on defendants to settle, whereas individual trials would not. The risk of facing an all-or-nothing verdict presents too high a risk, even when the probability of an adverse judgment is low. These settlements have been referred to as judicial blackmail.

Castano v. American Tobacco Co., 84 F.3d 734, 746 (5th Cir. 1996) (citations and footnote omitted).

2. The federal courts have recognized that, in order to prevent the class action device from being used as a weapon of

extortion, it is necessary to apply the requirements of Rule 23 rigorously. See, *e.g., Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 345 (4th Cir. 1998); *Castano*, 84 F.3d at 740. In particular, the federal appellate courts have uniformly refused to permit class actions when the claims of the class members would require individualized proof and the defendant would have individualized defenses to those claims. See, *e.g., Broussard*, 155 F.3d at 340-344; *Sprague v. General Motors Corp.*, 133 F.3d 388, 397-399 (6th Cir. 1998) (en banc); *Andrews v. American Tel. & Tel. Co.*, 95 F.3d 1014, 1023-1025 (11th Cir. 1996); *Castano*, 84 F.3d at 744-745; *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 626-630 (3d Cir. 1996), aff'd sub nom. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *In re Northern Dist. of Cal., Dalkon Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 854-856 (9th Cir. 1982); *Simon v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 482 F.2d 880, 882-883 (5th Cir. 1973).[2] Indeed, several federal courts have recognized that it would violate the defendant's due process rights to try a case on the basis of class-wide proof when claims and defenses are individualized. See, *e.g., In re Fibreboard Corp.*, 893 F.2d 706 (5th Cir. 1990); *Western Elec. Co. v. Stern*, 544 F.2d 1196, 1199 (3d Cir. 1976); *Arch v. American Tobacco Co.*, 175 F.R.D. 469, 487-89 & n.21 (E.D. Pa. 1997); *In re Masonite Corp. Hardboard Siding Prods. Liab. Litig.*, 170 F.R.D. 417, 425 (E.D. La. 1997).

The federal courts also have refused to paper over differences in the laws of the various states simply to make a

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[2] The federal district court decisions refusing to certify classes on this ground are too numerous to list. A representative sample includes: *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 676-680 (S.D. Cal. 1999); *In re Jackson Nat'l Life Ins. Co. Premium Litig.*, 183 F.R.D. 217, 220-222 (W.D. Mich. 1998); *Chin v. Chrysler Corp.*, 182 F.R.D. 448, 455-457 (D.N.J. 1998); *In re Ford Motor Co. Vehicle Paint Litig.*, 182 F.R.D. 214, 220-222 (E.D. La. 1998); *Marascalco v. International Computerized Orthokeratology Soc'y, Inc.*, 181 F.R.D. 331, 338-339, 340 (N.D. Miss. 1998).

case manageable as a multi-state class action. See, *e.g.*, *Andrews*, 95 F.3d at 1024, 1025; *Castano*, 84 F.3d at 749-750; *Jackson Nat'l Life*, 183 F.R.D. at 223; *Chin*, 182 F.R.D. at 457-462.

3. Regrettably, the state courts, as a group, have been far more lax in enforcing statutory and constitutional limitations on class actions.[3] As one Member of Congress recently testified at a House hearing:

> Opportunistic lawyers have identified those states and particular judges where the class action device can be exploited. The most significant of these devices is the certification of the class itself. For many companies, it is easier and less costly to settle a class action suit once it has been certified than to fight it in a foreign jurisdiction before a potentially unfriendly judge and jury. Some state courts, however, do not give the defendants a fighting chance. They routinely certify classes before the defendant has been served with a complaint and given an opportunity to defend itself. In one case, a state court judge certified the class before the case was even filed in the court.

Hearings on Mass Torts and Class Actions Before the Courts and Intellectual Property Subcomm. of the House Judiciary Comm., 105th Cong. (Mar. 5, 1998) (statement of Representative James P. Moran), available at http://www.house.gov/judiciary/41155.htm (hereinafter "Moran Testimony").

The more sophisticated members of the plaintiffs' class action bar have managed to identify specific counties within

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[3] We are not suggesting that every state court (or even the majority) has acquiesced in class action abuse, but simply that such abuse occurs with sufficient regularity in the state court system to make it rational for Congress to have expanded federal jurisdiction over class actions.

particular states in which they can be virtually assured of finding a judge who will certify a case as a class action without regard to whether it can fairly be tried as one. As the Wall Street Journal has reported:

> Plaintiffs' lawyers are going out of their way to sue big companies these days. All the way to backwaters like Plaquemine, La., Union City, Tenn., and Eutaw, Ala. A growing number of big lawsuits are landing in small towns * * *.
>
> Rural courts offer lawyers a strategic advantage. In major metropolitan areas, judges are assigned to cases by lottery, but small communities often have only one or two judges in town. * * * Unlike federal judges, many state judges are popularly elected, raising the possibility of bias.

Richard Schmitt, *Justice RFD: Big Suits Land in Rural Courts,* WALL ST. J., Oct. 10, 1996, at B1.

A few states have become particularly notorious for allowing extortionate class actions and running roughshod over the constitutional rights of out-of-state defendants and absent class members alike. For example, one study found that in 1995-1997 courts in six thinly populated rural Alabama counties certified 43 class actions, at least 28 of which were brought on behalf of nationwide classes, primarily against large national companies. Stateside Associates, *Class Action Lawsuits in State Courts: A Case Study in Alabama* (1998) (attached to Statement of Dr. John B. Hendricks at Hearings on Mass Torts and Class Actions Before the Courts and Intellectual Property Subcomm. of the House Judiciary Comm., 105th Cong. (Mar. 5, 1998), available at 1998 WL 122544).[4] Another study found that the number of class actions filed in Texas state courts rose by 820% between 1988 and 1998. See *Class Action Litigation–A Federalist Society Survey*, 1 CLASS

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[4] Dr. Hendricks is the founder of an Alabama research and development company who appeared on behalf of the Chamber.

ACTION WATCH, at Figure 1.[5] That rate of increase is significantly higher than in the federal courts, where the number of pending class actions increased during the same ten-year period by 338%. *Ibid.*

These hand-picked state courts have demonstrated a propensity to certify classes that federal courts have refused to certify and to dispense casually with the procedural safeguards required by the Constitution and faithfully applied in the federal courts. For example, in 1996 a judge in Mobile County, Alabama, certified a nationwide class action alleging state law products liability, breach of warranty, negligence, and fraud claims on behalf of several million owners of homes on which the defendants' siding had been installed. In an opinion written by class counsel, the court brushed aside the constitutional choice-of-law problem, stating, without the slightest legal analysis, that "the Court is not persuaded that the variations in applicable state laws are so significant as to create predominant individual issues." Order Certifying Plaintiff Class at 8, *Naef v. Masonite Corp.*, No. CV-94-4033 (Mobile County Cir. Ct. Nov. 15, 1995) (reprinted in *Ex parte Masonite Corp.*, 681 So. 2d 1068, 1090 (Ala. 1996)). The court also gave short shrift to the contention that the claims were fact-specific and that the defendants were being denied the opportunity to prove defenses specific to the individual class members. *Ibid.* After the Alabama Supreme Court denied mandamus, the trial court held a "first-phase" trial limited to the issue of whether the defendants' products were defective. In that trial, the court purported to solve the dilemma of having to apply the laws of the 51 jurisdictions by simply making up its own law, amalgamating bits and pieces of the laws of the 51 jurisdictions into five different design defect standards that did not accurately represent the law of *any* State.

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[5] A copy of this study has been lodged with the Clerk of the Court and served on the parties.

Meanwhile, another set of class action lawyers sought certification of an identical class in federal court. That court denied certification, holding that "[d]ifferences in state law and user facts overwhelm the common elements of plaintiffs' claims. Combined, these differences are so great as to make national class treatment unwieldy, unfair, and unlawful." *Masonite Corp. Hardboard Siding*, 170 F.R.D. at 425. It deemed inadequate the Alabama court's attempt to boil down the laws of 51 jurisdictions into five sets of "Esperanto instruction[s]," opining that "[t]he number of state products liability laws that confront Masonite and their doctrinal dissonance, cannot be glossed over casually." *Id.* at 422. The court concluded that "Due Process, the Seventh Amendment, * * * and Rule 23 make it impossible to accommodate the theoretical benefits of class treatment." *Id.* at 427. The defendants in *Naef* brought the Louisiana district court's ruling to the attention of the Alabama courts before what was to be the second phase of the class action trial, but the trial court refused to decertify the class, and the Alabama Supreme Court denied mandamus.[6]

The Alabama Supreme Court has recently begun to enforce the state-law and constitutional limits on class certification. See, *e.g.*, *Ex parte Green Tree Fin. Corp.*, 723 So. 2d 6, 10-11 (Ala. 1998) (ordering decertification of nationwide class because laws of different states would apply to different class members' claims and because the claims would present individual issues requiring subjective proof). Texas, which was

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[6] For a fuller description of the constitutionally flawed procedures imposed in *Naef*, see Application for a Stay of Proceedings Pending the Filing of a Petition for a Writ of Certiorari to Review a Final Decision of the Supreme Court of Alabama, *International Paper Co. v. Naef*, No. A-28 (filed July 3, 1997). During the pendency of the stay application, the defendants — in what could hardly be described as a surprising move in view of the forum and the amount of compensatory and punitive damages claimed by the class — settled the case and withdrew the stay application.

similarly known as a hotbed of class action activity, has also of late tightened its requirements for class certification through its highest court. See, *e.g.*, *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444 (Tex. 2000) (ordering decertification of class that was not clearly ascertainable). Unfortunately for class action defendants, these developments have done little to resolve the underlying problem. Class action plaintiffs and their attorneys have merely moved their "litigation road show" to more hospitable forums — in particular, Mississippi. See Jerry Mitchell, *Out-of-State Cases, In-State Headaches*, CLARION-LEDGER, June 17, 2001 (noting that "[n]ews of Mississippi's multimillion-dollar verdicts has attracted trial lawyers from other states, particularly Texas and Alabama").

In a recent example of Mississippi's openness to mass tort suits, a Mississippi state court ordered mass joinder of claims alleging that the defendant had engaged in fraud and breach of fiduciary duties in connection with issuing collateral protection insurance policies, despite the refusal of a federal court to certify a class action based upon those very same claims.[7] The Mississippi Supreme Court affirmed the trial court's ruling, summarily rejecting the defendant's argument that joinder in a single lawsuit of hundreds of individual plaintiffs possessing multiple claims based upon different, highly fact-specific assertions would "violate [the defendant's] fundamental right to a fair and impartial trial." *American Bankers Ins. Co. v. Alexander*, No. 98-IA-00046-SCT, 97-IA-01271, 2001 WL 83952, at *6 (Miss. Feb. 1) (citations and internal quotation marks omitted), cert. denied, 122 S. Ct. 324 (2001). Use (and abuse) of the mass joinder device is now rampant in Mississippi. See Mark Ballard, *Mississippi Becomes A Mecca*

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[7] Mississippi does not allow class actions, but instead permits joinder of multiple plaintiffs as parties if the plaintiffs assert a "right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences" and a "question of law or fact common to all these persons will arise in the action." Miss. R. Civ. P. 20.

for Tort Suits, NAT'L L.J., April 30, 2001, at A1 (noting that "Jefferson County has become a mecca for plaintiffs' lawyers eager to use Mississippi's unique law to secure jurisdiction over multinational corporations").

Nor is state-court class-action abuse simply a regional phenomenon. In November 2000, a Washington state court certified a class action on behalf of State Farm insureds alleging improper denials of first-party medical benefits provided by their automobile policies, despite its recognition that common issues did not predominate and the refusal of other state courts to certify multi-state class actions involving the same defendant, many of the same putative class members, and virtually identical legal claims.[8] *Sitton v. State Farm Mut. Auto. Ins. Co.*, No. 00-2-10013-2 (Wash. Super. Ct. 2000). More recently, a Washington state court certified a 27-state class action seeking "inherent diminished value" ("IDV") damages under the putative class members' automobile insurance policies, even though in many jurisdictions it remains a question of first impression whether IDV claims are legally cognizable even in individual actions, and courts in several other states have already held that they are not.[9] *Busani v.*

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[8] See *Siler v. State Farm Mut. Auto. Ins. Co.*, No. 99-L-863, oral ruling (Ill. Cir. Ct., Madison Cty. Aug. 16, 2000); *Merrill v. State Farm Mut. Auto. Ins. Co.*, No. 497-316, order (S.D. Ga. June 11, 1998); *Smith v. State Farm Mut. Auto. Ins. Co.*, No. 89-CP-24-852, order (S.C. Ct. Common Pleas Feb. 23, 1990); *see also Hare v. State Farm Mut. Auto. Ins. Co.*, No. 2-98 CV 65, order (N.D. Ind. Mar. 26, 2001) (denying class certification after *Sitton* ruling).

[9] See, *e.g.*, *Siegle v. Progressive Consumers Ins. Co.*, 788 So. 2d 355, 361 (Fla. Dist. Ct. App. 2001) (concluding that to require insurer to repair vehicle and compensate insured for vehicle's diminished value would improperly re-write insurance contract); *Carlton v. Trinity Universal Ins. Co.*, 32 S.W.3d 454, 465 (Tex. App.-Houston 2000) (concluding as a matter of law that insurer cannot be held liable for IDV damages where it has fully repaired insured's automobile); *Johnson v. State Farm Mut. Auto. Ins. Co.*, 754 P.2d

United Servs. Auto. Ass'n, No. 99-2-68217-1 (Wash. Super. Ct. 2001).

Finally, as a result of one Illinois state court's willingness to certify and try a 4.7-million member, 48-state class action against State Farm under Illinois law — despite the refusals of two federal courts and one state court from northern Illinois to certify similar (indeed smaller) classes[10] — southern Illinois has recently been added to the list of favorite venues for class action lawyers.[11]

A consortium of plaintiffs' lawyers from around the country filed the class action in state court in sparsely populated Williamson County, Illinois, on July 28, 1997, alleging that State Farm breached its contracts with its policyholders (which generally required State Farm to pay the amount necessary to restore damaged vehicles to pre-loss condition) and violated Illinois' consumer fraud statute by using the price of parts made

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330, 331 (Ariz. Ct. App. 1988) (denying IDV claim and holding that insurer's "liability is limited by the terms of the policy to the cost of repairing the vehicle less any deductible payable by the insured"); *Ray v. Farmers Ins. Exch.*, 200 Cal. App. 3d 1411, 1417 (1988) ("To hold Farmers liable for the automobile's diminution in value would make Farmers an insurer of the automobile's cash value in virtually all cases and would render essentially meaningless its clear right to elect to repair rather than to pay the actual cash value of the vehicle at the time of loss.").

[10] See *Moorhead v. State Farm Mut. Auto. Ins. Co.*, No. 95-AR-0668-S (N.D. Ala. Sept. 12, 1997); *Murray v. State Farm Mut. Auto. Ins. Co.*, No. 96-2585-M1/A (W.D. Tenn. Aug. 19, 1997); *Rios v. Allstate Ins. Co.*, No. 94 CH 11396 (Cook County Cir. Ct. Jan. 27, 1998).

[11] To be sure, State Farm is an Illinois company and hence would not have been able to remove the suit. Our point in discussing it is simply to illustrate the kinds of abuses that go on in some state courts and that make the expansion of federal jurisdiction over class actions perfectly rational.

by companies other than the automakers or their licensees ("non-OEM parts") when determining how much to pay for repairs to its policyholders' vehicles. The trial court certified the class on the same day without waiting for State Farm to be served, much less file an opposition to class certification. The court eventually held a hearing and reconfirmed its ruling, notwithstanding State Farm's argument that the need to apply the laws of the 48 states represented in the class and the individualized factual determinations that would be required made it impossible to try the case as a class action consistent with due process.[12]

The 4.7 million class members had myriad makes and models of automobiles, and over 30,000 different non-OEM parts were specified in the 4.7 million repair estimates. Undaunted, the court proceeded to conduct a trial, in which the plaintiffs were allowed to prove their claim using anecdotal testimony by owners of body shops and some internal State Farm memos criticizing particular non-OEM parts. They were not required to prove that each class member actually received one or more non-OEM parts (as opposed to simply having one specified on a repair estimate),[13] that the particular non-OEM parts used in each class member's repair (if any) were inferior to their OEM counterparts, or that the particular non-OEM parts installed in class members' vehicles failed to restore *any* (much less every) class member's vehicle to its pre-loss condition. Meanwhile, the trial court precluded State Farm from attempting to present individualized defenses, such as waiver

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[12] For a more complete description of the class certification phase of the case, see Petition for Writ of Certiorari, No. 97-2063, *State Farm Mut. Auto. Ins. Co. v. Speroni* (filed June 22, 1998).

[13] State Farm adduced evidence at trial that, for a variety of reasons, class members often received OEM parts at no extra expense despite the fact that State Farm had specified a non-OEM part on the repair estimate.

and estoppel.[14] The court also prohibited State Farm from adducing testimony from current and former insurance regulators that the use of non-OEM parts was encouraged and/or permitted in their states.

In October 1999, the jury determined that State Farm breached its "contract with the class" by using non-OEM parts and awarded the class $456,636,180 in compensatory damages, despite the admissions of the plaintiffs' damages expert that one component of his damages calculation made no economic sense and that, in estimating the other component, he had ignored various real-world factors that could not be determined on a class-wide basis. The trial court then piled on an additional $130,000,000 in so-called "disgorgement" damages and $600,000,000 in punitive damages under the Illinois Consumer Fraud and Deceptive Business Practices Act. In April 2001, the Illinois Court of Appeals affirmed the trial court's judgment (with the exception of the "disgorgement" damages) in an opinion that gave remarkably short shrift to State Farm's arguments that class treatment was unwarranted because of the fact-specific nature of each claim and the differences in state law governing the claims of non-Illinois class members. *Avery v. State Farm Mut. Auto. Ins. Co.*, 746 N.E.2d 1242 (Ill. App. Ct. 2001).

Not surprisingly, the October 1999 verdict served as a magnet attracting class-action lawyers to southern Illinois. Two southern Illinois counties in particular found themselves the focal point of a flurry of class-action activity, with at least ten consumer class actions filed in the last three months of

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[14] Many of the class members resided in states whose laws expressly require insurers to obtain the consent of the insured as a condition of using non-OEM parts. See, *e.g.*, Colo. Rev. Stat. Ann. § 42-9-107; Ind. Code § 27-4-1.5-8; N.Y. Comp. Codes R. & Regs. tit. 11, § 216.7(b)(5)(ii); Or. Rev. Stat. §§ 746.287(1), 746.292(4)(b); R.I. Gen. Laws 1956 § 27-10.2-2; W. Va. Code § 46A-6B-3.

1999, most of them against out-of-state businesses and on behalf of putative nationwide classes.[15]

4. In short, out-of-state class action defendants have been subjected to procedural unfairness in state courts that would not be tolerated by the federal courts. That trend has been accelerating in recent years. As Congressman Moran put it, "[i]n essence, we have a situation where out of state defendants are being haled into the plaintiffs' state court where they face complex litigation with large sums of money at stake. These are the types of cases for which diversity jurisdiction was created." Moran Testimony, *supra*.

Compounding the failure of some state courts to enforce the statutory and constitutional limitations on class actions is their frequent inability to handle complex, multistate class actions. As one commentator has noted, "many state courts have neither the complex litigation experience nor the support staff necessary to address the complex, technical issues normally presented by class actions." Hearings on Mass Torts and Class Actions Before the Courts and Intellectual Property Subcomm. of the House Judiciary Comm., 105th Cong. (Mar. 5, 1998) (statement of John W. Martin, Jr.), available at 1998 WL 8993263. More importantly, state courts "lack any mechanism

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[15] See *Paul v. Country Mut. Ins. Co.*, No. 99-L-995 (Madison County, filed Oct. 13, 1999); *Stone v. SBU, Inc.*, No. 99-L-977 (Madison County, filed Oct. 7, 1999); *Arnold v. State Farm Mut. Auto. Ins. Co.*, No. 99-L-0896 (St. Clair County, filed Oct. 22, 1999); *Strasen v. Allstate Ins. Co.*, No. 99-L-1040 (Madison County, filed Oct. 26, 1999); *Phillips v. Ford Motor Co.*, No. 99-L-1041 (Madison County, filed Oct. 26, 1999); *Hobbs v. State Farm Mut. Auto. Ins. Co.*, No. 99-L-1068 (Madison County, filed Nov. 2, 1999); *Rios v. St. Paul Fire & Marine Ins. Co.*, No. 99-L-1125 (Madison County, filed Nov. 16, 1999); *Capone v General Motors Corp.*, No. 99-L-1127 (Madison County, filed Nov. 17, 1999); *Siler v. State Farm Mut. Ins. Co.*, No. 99-L-863 (Madison County, filed Nov. 30, 1999); *Winn v. Associates First Capital Corp.*, No. 99-L-1227 (Madison County, filed Dec. 23, 1999).

for coordinating parallel litigation," which often results in defendants being forced to expend substantial resources to litigate multiple lawsuits in different courts and potentially gives classes the opportunity for "several bites at the apple against a class action defendant." *Ibid.* By contrast, the federal courts have both the resources to handle large, complex litigation and the means to consolidate related actions, see 28 U.S.C. § 1407, resulting in an efficient use of resources and fairness to a class action defendant.

Given that some state courts are decidedly tilted in favor of class action plaintiffs and against class action defendants, it is no surprise that plaintiffs' lawyers often manipulate the diversity rules to destroy federal jurisdiction. As Judge Nangle, the recently retired chair of the Judicial Panel on Multidistrict Litigation has noted, "a growing trend in class action litigation in this country" is the extent to which plaintiffs' attorneys "carefully craft[] the language in the[ir] petitions or complaints in order to avoid the amount in controversy requirement of the federal courts." *Davis v. Carl Cannon Chevrolet-Olds, Inc.*, 182 F.3d 792, 798 (11th Cir. 1999) (Nangle, J., concurring). Unfortunately, the Ninth Circuit's opinion in this case provides yet another way for plaintiffs' counsel to game the system simply by selecting as class representatives only those class members whose claims fail to meet the monetary threshold established in Section 1332, while keeping class members with larger claims hidden in the weeds. If Congress intended to expand federal jurisdiction over class action suits when it enacted Section 1367, it could not also have intended that federal jurisdiction be so easily evaded through artful pleading.

5. As we have discussed extensively in this amicus brief, there is a significant class action crisis in this country. Out-of-state corporate defendants frequently find themselves haled into state courts to defend putative class action suits before judges who often do not undertake the thorough review of the propriety of class treatment that is common in the federal courts. These defendants will settle a certified class action suit,

no matter how meritorious, in order to avoid potentially ruinous liability. The compelling interest in ensuring that the engines of the American economy are not subjected to this type of class action extortion in state courts supplies a more than rational reason for Congress to have excluded Rule 23 from the exceptions to supplemental jurisdiction set forth in 28 U.S.C. § 1367(b). As the petition for certiorari cogently explains, this omission evidences Congress's clear intent that under Section 1367 a district court may exercise supplemental jurisdiction over the claims of members of a Rule 23 diversity class action that do not meet the amount-in-controversy requirement of Section 1332 so long as at least one class member does meet that requirement.

The Court has previously granted review of the issue presented by this case — the extent of a district court's supplemental jurisdiction in class action suits. Since an evenly divided Court left the issue unresolved in *Free v. Abbott Laboratories, Inc.*, 529 U.S. 333 (2000), the dispute has only deepened among the lower courts. Four federal appellate courts (including the Ninth Circuit) have agreed with petitioner. Three federal appellate courts, despite Section 1367's plain language, have held that each class member must satisfy the amount-in-controversy requirement in Section 1332 for a district court to have federal jurisdiction over the class action. Countless numbers of district courts have also confronted this issue, resulting in a waste of judicial and private resources devoted to the threshold question of whether a particular class action suit belongs in federal court or in state court.

Because "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise," 28 U.S.C. § 1447(d), a trial court's decision on whether Section 1367 authorizes it to assert supplemental jurisdiction over class-action claims that do not meet the amount-in-controversy requirement often does not make it to the federal circuit court level, much less to this Court. DaimlerChrysler's petition thus presents a rare opportunity for

the Court to revisit this issue of significant and national import, which has now engendered a clear circuit split and collateral uncertainty among judges and litigants, and to give effect to Congress's intent that class action defendants have a greater opportunity to litigate in federal court. Moreover, this particular case presents the ideal opportunity for the Court to enunciate definitive rules in the area of class action supplemental jurisdiction, because the Ninth Circuit's approach threatens to render Section 1367 a dead letter.[16] Review is warranted to prevent Congress's will from being thwarted in this underhanded manner.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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[16] As part of its overall consideration of the case, the Court should also review the Ninth Circuit's interconnected holding that punitive damages cannot be aggregated and attributed to each member of a class action (or, alternatively, to the class representatives) for purposes of the amount-in-controversy requirement. Guidance on this issue would be extremely valuable to both courts and litigants.